Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-488

GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., ET AL.,
Petitioners,

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

and

LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

MEMORANDUM FOR RESPONDENT LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

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MEMORANDUM FOR RESPONDENT LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

I. ROLE OF RESPONDENT LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS IN THE LITIGATION

The purpose of this memorandum is to advise the Court of the role Local Union No. 89, International

Brotherhood of Electrical Workers (Local 89) has taken in the course of this litigation. Unfortunately, the decisions of the courts below do not distinguish among the three defendants named in the complaint and thus the record before this Court does not adequately represent the true course of the litigation with respect to Local 89.[1]

Only the Petitioners, General Telephone Company of the Northwest, Inc. and West Coast Telephone Company of California, Inc., (jointly hereinafter GTNW) filed the motion to dismiss the class action aspects of the case in the District Court. Similarly, only GTNW appealed the decision of the District Court approving the Magistrate's Report to the Court of Appeals for the Ninth Circuit. Finally, only GTNW, not Local 89, filed the petition for a writ of certiorari with this Court. At no time has Local 89 participated in any way in the briefs or arguments relating to the question whether the EEOC must seek certification as a class representative under Rule 23 of the Federal Rules of Civil Procedure.

A major reason for Local 89's posture in the courts below is the fact that discussions between the EEOC and Local 89 were in progress with respect to resolving the allegation in the complaint against Local 89. On December 18, 1978, the Court approved a consent decree between EEOC and Local 89, a copy of which is contained in the appendix to this memorandum. The consent decree releases Local 89 from all claims stated in EEOC's first and second amended complaints.[2] The decree states

[1] The Ninth Circuit in its decision defined the "defendants-appellants" as: "General Telephone Company of the Northwest, Inc., its subsidiary, West Coast Telephone Company of California, Inc., and Local Union No. 89, International Brotherhood of Electrical Workers (collectively called General Telephone)" despite the fact that Local 89 did not participate in the appeal. (Pet. App. A-7).

[2] A cross claim filed by GTNW is still pending against Local 89. GTNW seeks judgment against Local 89 in the event a final judgment is entered against GTNW in favor of the EEOC or any of the persons it purportedly represents.

that it: "does not constitute an adjudication or finding that there has been a violation of Title VII and should not be construed as an admission by Local 89 of any past discriminatory practice." (Local 89 App. at 2a.) The decree provides that Local 89 will cooperate in placing women in craft jobs, supply EEOC with information regarding grievances filed by employees of GTNW and abide by any court decree or judgment issued in the underlying litigation against the companies. The failure of the courts below to distinguish Local 89 from the other defendants fails to take cognizance of Local 89's position in the litigation and of the consent decree to which it voluntarily agreed. Nevertheless, because the class action issue is before this Court for determination on the merits, Local 89 wishes to comment briefly on that issue.

II. THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION SHOULD BE REQUIRED TO CONFORM WITH RULE 23 OF THE FEDERAL RULES OF CIVIL PROCEDURE WHEN IT BRINGS SUIT UNDER SECTION 706(f)(1) OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 SEEKING RELIEF FROM DISCRIMINATORY PRACTICES AFFECTING A CLASS OF INDIVIDUALS

On the merits of the issue before the Court, Local 89 contends that the EEOC should be compelled to meet the requirements of Rule 23 when it sues on behalf of a class of individuals under Section 706 of Title VII of the Civil Rights Act of 1964. Local 89 supports the rationale for applying Rule 23 set forth in the Fifth Circuit's opinion in *EEOC* v. *D. H. Holmes Company*, 556 F.2d 787 (5th Cir. 1977), *cert. denied*, 438 U.S. 265 (1978), and the numerous district court decisions set forth in the petition which have applied Rule 23 to Section 706 actions. (Petition, p. 5, note 1.) These cases all point out the basic unfairness to Title VII defendants if the EEOC is not required to conform to Rule 23. Rule

23 certification would provide Title VII defendants with adequate notice and protection from *multiple litigation* of the same facts and issues with potentially inconsistent adjudications. At the same time, members of the class, who would be bound by the final judgment, would derive the benefits of EEOC representation without the burdens and expense of litigation. They would also obtain a clear knowledge of their rights and remedies vis-a-vis the defendants under that judgment and the Statute. EEOC, too, would benefit from an early and clear demarcation of the scope of its action in prosecuting its claims through discovery and trial. Finally, applying Rule 23 to the EEOC would allow for a more efficient marshalling of judicial time and effort. On balance, the small burden placed upon EEOC in seeking certification of a class action under Rule 23 does not outweigh the necessary protections afforded Title VII litigants and potential class members in actions brought by the EEOC.

Respectfully submitted,

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January, 1980

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Civil Action Number C-77-247M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff,

v.

GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC.,

and

LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,

and

WEST COAST TELEPHONE COMPANY OF CALIFORNIA, INC.,
Defendants.

CONSENT DECREE BETWEEN PLAINTIFF AND DEFENDANT LOCAL 89, IBEW

The Equal Employment Opportunity Commission, plaintiff, initiated this suit on April 11, 1977, alleging violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., as amended by Public Law 92-261, 86 Stat. 103 (March 24, 1972). By agreement of plaintiff and Local 89 and on the representations of their respective counsels, the Court having duly considered same, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

Local 89 shall abide by all the terms providing for injunctive or seniority relief in any court decree or judgment, whether contested or uncontested, arising out of

Civil Action C-77-247M, whether or not any such relief would be in conflict with its collective bargaining agreements with General Telephone Company and West Coast Telephone.

Local 89 will provide plaintiff with copies of any grievance filed with Local 89 by female employees of General Telephone and West Coast Telephone which (1) complain of sex discrimination by any defendant, or (2) complain of denial of a craft job or of a violation of the collective bargaining agreement with respect to a female craft employee. A copy of each such grievance shall be sent to plaintiff's San Francisco Regional Office of General Counsel within 10 days after filing with Local 89.

Upon plaintiff's request in writing specifying one or more areas in which the plaintiff believes that Local 89 is not complying with the terms of this Agreement, Local 89 shall provide such other information as plaintiff reasonably deems necessary to evaluate the extent of Local 89's compliance with this Decree.

This Order is based on an agreement between plaintiff and defendant Local Union No. 89, International Brotherhood of Electrical Workers (Local 89), and shall not be construed to release any other defendant named by plaintiff in this action. Local 89 is released from all claims stated in paragraphs 13 and 14 of plaintiff's First Amended Complaint as set forth in the Stipulation and Order on Second Amendment to Complaint signed by the Court on June 12, 1978.

This Order, issued with the consent of plaintiff and Local 89 prior to the introduction of any evidence, does not constitute an adjudication or finding that there has been a violation of Title VII and should not be construed as an admission by Local 89 of any past discriminatory practice. Local 89 agrees to cooperate with General Telephone Company of the Northwest (General Telephone)

and West Coast Telephone Company of California (West Coast Telephone) in placing women in craft jobs as those jobs are defined by General Telephone and West Coast Telephone in the Employer Information Report EEO-1.

DURATION OF AGREEMENT

This Agreement shall remain in effect until either (1) the resolution of C77-247M and the expiration of any decree entered by the Court in that action; or (2) the parties agree in writing that the Agreement is no longer warranted.

Plaintiff shall not seek a finding that Local 89 has not complied with this Agreement without first (a) advising Local 89 in writing of any alleged failures to comply; and (b) affording Local 89 a reasonable opportunity to explain or correct the alleged failure to comply.

COUNSEL APPROVAL

The parties hereto agree to entry of this decree subject to final approval by the Court.

DATE:

HERMAN L. WACKER
Vance, Davies, Roberts,
Reid & Anderson

By /s/ Herman L. Wacker
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Attorney for Plaintiff

Dated: Recommended for Entry
December 18, 1978

/s/ Philip K. Sweigert
PHILIP K. SWEIGERT
United States Magistrate
and Special Master

/s/ Walter T. McGovern
WALTER T. McGOVERN
Chief United States District Judge